



Request for Proposals

For

Education Portal

**State of Maine
Department of Education**

November 2, 2009

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1 Administrative Issues

1.1 Introduction/Overview

The Maine Department of Education (MDOE) is seeking a vendor to assist in the development of an Education Portal. The Education Portal is a component of the Statewide Longitudinal Data System. The system will serve a wide range of stakeholders in support of improving student achievement and providing Maine's students with 21st century skills.

The Education Portal is designed to be a single entry point for a number of web-based applications provided by the Maine Department of Education that are directly accessed by stakeholders through public access or secure logins. The applications include, but are not limited to: Maine Education Data Management System (MEDMS), Infinite Campus State Edition, Education Data Warehouse/Decision Support System, Education Data Dictionary, MEDMS Financial System, Student Routing and Transportation Management System, and School Facility Management System.

In preparation for this Request for Proposals (RFP) MDOE completed an inventory of data collections, repositories and outputs, and developed an education data dictionary that identifies core data elements and definitions. The metadata repository is documented in an online tool maintained by MDOE.

The purpose of this RFP is to find select a vendor to work in partnership with MDOE to:

- Establish a statewide education portal;
- Establish a standard open interface for single sign on security and single provisioning;
- Establish a functional, extensible, and attractive navigation schema to unify navigation between MDOE provided applications;
- Enable collaboration, between users and other stakeholders, individually and within groups;
- Enable enterprise search of document repositories, business applications and websites;
- Enable creation, publishing and management of web forms, blogs and surveys;
- Leverage the existing state Active Directory to synchronize with a Microsoft SQL relational database and store authoritative information regarding users, organizations, and roles;
- Deploy a directory management web part to enable fully delegated management of users, organizations, and roles; and
- Meet the following Federal and State requirements:
 - **FERPA** (see Appendix C – Supporting Policy Documents),
 - **HIPAA** (see Appendix C – Supporting Policy Documents),
 - All IT products and services delivered as part of this Agreement must conform to the State IT Policies, Standards, and Procedures (Maine.Gov/oit/oitpolicies) including, but not limited to:
 - **Architecture Compliance Policy** (see Appendix C – Supporting Policy Documents),
 - **State of Maine Information Technology Environment** (see Appendix C – Supporting Policy Documents),
 - **Domains and Bricks** (see Appendix C – Supporting Policy Documents),
 - **Deployment Certification Policy for Major Application Projects** (see Appendix C – Supporting Policy Documents),

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- **Web Standards and Accessibility Policies** (see Appendix C – Supporting Policy Documents),
- **State of Maine Information Technology Security Policy** (see Appendix C – Supporting Policy Documents),
- **State of Maine Remote Hosting Policy** (see Appendix C – Supporting Policy Documents),
- All other legislation guiding the MDOE.

1.2 Purpose and Scope of Services

In this Request for Proposals, the MDOE seeks proposals to assist in the development of an education portal. The term “requirement” is used in this RFP to mean a statement of functional capability, business rule, or environmental constraint that specifies what the system must do.

The goal of this RFP is to define the system requirements in a clear manner, focusing on the level of detail and granularity necessary to allow the successful bidder’s development team to rapidly begin design and implementation. Additional information may be obtained at a bidder’s conference after this RFP is released. Requirements that do not have sufficient detail and granularity will be refined during the design phase of the project at no additional cost to MDOE. MDOE reserves the right to require the successful bidder to meet with stakeholders identified by MDOE to receive additional guidance regarding the implementation of these requirements.

1.3 Objectives

The following objectives will be met by the Education Portal:

- 1) Implement an education portal as specified in Section 2 by August 1, 2010.
- 2) Provide a single sign-on gateway to MDOE applications.
- 3) Provide authentication by passing credentials to targeted applications based on individual or group user rights.
- 4) Provide workflow, collaboration, content management and enterprise search capabilities.

1.4 Procurement Timeline

Public Advertisement	November 2, 2009
RFP Published	November 2, 2009
Bidders’ Conference	November 30, 2009
Proposals Due	December 29, 2009

1.5 Bidder’s Conference

A bidder’s conference will be held at 1:00 pm on November 30, 2009 at the following location:

Conference Room 105 (1st Floor)
Burton M. Cross Office Building
111 Sewall Street,
Augusta, ME 04330

1.6 Administrative Information

a. The RFP Administrator is:

Bill Hurwitch
Department of Education
23 State House Station

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Augusta, ME 04333-0023

E-mail: bill.hurwitch@maine.gov

- b. From the date on which this RFP is released and during the period up to and including the date on which a notice of intent to award is issued, prospective bidders shall contact only the RFP administrator above with regard to this procurement. Direct or indirect attempts by a prospective bidder, its employees, agents or representatives, to contact other representatives of MDOE or other State agencies to obtain information or for other purposes regarding this RFP or the procurement process may result in disqualification of a bidder's proposal.
- c. In **NO CASE** shall verbal communication override written communication. Only written communications are binding on MDOE.
- d. MDOE assumes no responsibility for representations concerning this RFP or procurement, which are, or may be, made by its employees, agents, or representatives prior to the execution of an Agreement, unless such representations are specifically incorporated into this RFP in writing. Verbal discussions pertaining to modifications or clarifications of this RFP shall not be considered part of this RFP unless confirmed in writing. Any information provided by a bidder verbally shall not be considered part of that bidder's proposal. Only written communications from a prospective bidder and received by MDOE shall be accepted.
- e. Bidders may submit questions regarding this RFP in writing to the RFP administrator. The deadline for bidder submitted questions is 4:00 p.m. local time December 2, 2009. The State will prepare written responses to bidder questions and will post all questions and responses on the Department of Education website by December 8, 2009. Names of bidder firms and individuals asking specific questions will not be disclosed.

1.7 Preparation of the Proposal

The "Official Proposal" shall be typewritten. Changes to the technical proposal may be lined out and initialed. **Bidders shall follow the proposal instructions given in Section 3 of this RFP.**

Section 3 of this RFP requires the use of the Cost Proposal Form that is included with this RFP document as Appendix B – Cost Proposal Form. Use of the Cost Proposal Form is **MANDATORY**. Failure to use the mandatory Cost Proposal Form shall be considered unresponsive and shall result in the summary rejection of the bidder's proposal.

All answers that are given to the questions asked in this RFP are subject to verification. Misleading and/or inaccurate answers shall be grounds for disqualification at any stage in the procurement process.

The "Official Proposal" containing the signed, original response to this RFP and **Ten (10)** paper copies, as well as one copy in electronic format using Microsoft Word shall be delivered in sealed package(s) **no later than 2:00 pm on December 29, 2009**. The Technical Proposals and general information shall be sealed in one envelope and one (1) copy of the Cost Proposal shall be sealed in a separate envelope. The entire package, containing all required response forms and other required information should be submitted together. All packages shall be clearly labeled with the following information.

- a. Department of Administrative & Financial Services
Division of Purchases
Burton M. Cross Building, 4th Floor
9 State House Station
Augusta, Maine 04333-0009
- b. Education Portal, RFP #200909519
- c. Bidder's Name and Address
- d. Name of Contact Person, Telephone Number, Fax Number, and Email Address
- e. Project Title
- f. Proposals Due 2:00 pm December 29, 2009

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Technical Proposals, General Information, and Cost Proposals: In addition, if multiple packages per proposal are used, the packages comprising the complete proposal shall be numbered in the following fashion: 1 of 4, 2 of 4, and so on. The original proposal shall be clearly labeled "Official Proposal" and all copies shall bear the labels "Copy 1" through "Copy 10."

If a bidder submits more than one (1) proposal, the bidder shall submit a separate Technical Proposal and a separate Cost Proposal for each proposal submitted. Each proposal shall be separately packaged and labeled as required herein.

1.8 RFP Changes and Addenda

In the event it becomes necessary to revise any part of this RFP prior to the scheduled submittal date, an amendment or an addendum shall be issued to all potential bidders who have received this RFP, consistent with any amendment timelines required by the Division of Purchases.

1.9 Rejection of Proposals

MDOE reserves the right to accept or reject any part of any proposal, and to accept or reject any or all proposals without penalty for any one of the following reasons:

- a. Failure to deliver the proposal by 2:00 pm on the due date.
- b. Failure to include the required Cost Proposal Form signed by an officer of the company submitting the proposal.
- c. Failure to include the Cost Proposal in a separate sealed envelope.
- d. Failure to follow the proposal format instructions as specified.

1.10 Certification of Independent Price Determination

By submission of a response to this RFP, the bidder certifies, and in case of a joint proposal, each party thereto certifies as to its own organization, that in connection with this procurement:

- a. The prices in this proposal have been arrived at independently, without consultation, communication, or agreement for the purpose of restricting competition, as to any matter relating to such prices with any competitor.
- b. Unless otherwise required by law, the prices, which have been quoted in this proposal, have not been knowingly disclosed by any prospective bidder and shall not knowingly be disclosed by the bidder prior to the notice of intent to award, directly or indirectly to any competitor.
- c. No attempt has been made, or shall be made, by a bidder to induce any other person or firm to submit, or not to submit, a proposal for the purpose of restricting competition.
- d. Each person signing this proposal certifies that:
 1. He/she is the person in the bidder's organization responsible within that organization for the decision as to the prices being offered herein; or
 2. He/she is not the person in the bidder's organization responsible within that organization for the decision as to the prices being offered herein, but that he/she has been authorized in writing to act as agent for the persons responsible for such decision.
 3. The offer is made by the submitted proposal, and an officer of the offering firm shall sign any clarifications to that proposal or a designated agent empowered to bind the firm in an Agreement.

1.11 Withdrawal of Proposals

Proposals may be withdrawn, modified, and resubmitted at any time prior to the time set for the receipt of proposals.

1.12 Disposition of Proposals

Written proposals submitted in response to this RFP (including the recording and any transcriptions of oral presentations by bidders) become the property of the State, regardless of whether MDOE rejects any or all of the proposals. The proposals shall not be returned to bidders, except as specified in this RFP.

1.13 Disclosure of Proposal Content

According to State procurement law, the content of all proposals, correspondence, addenda, memoranda, working papers, or any other medium which discloses any aspect of the request for proposals process will be considered public information when the award decision is announced. This includes all proposals received in response to this RFP, both the selected proposal and the proposal(s) not selected, and includes information in those proposals that a bidder may consider to be proprietary in nature. Therefore, the State makes no representation that it can or will maintain the confidentiality of such information.

1.14 Clarifications and Releases

MDOE may, but is not required to, request a bidder to clarify in writing any and all aspects of a proposal; however, bidders will not be allowed to alter or amend their proposals through the clarification process. MDOE reserves the right to contact and to discuss a bidder's performance with the bidder's other clients and former clients.

1.15 Proposal Evaluation and Award

All proposals submitted shall be evaluated in accordance with the requirements set forth in Section 4 of this RFP. Any Agreement resulting from this RFP and the subsequent evaluation process shall not necessarily be awarded to the bidder with the lowest price on an individual option basis. Instead, the Agreement shall be awarded to the compliant bidder who has accumulated the most points in accordance with the evaluation criteria outlined in Section 4.

This RFP as well as the successful bidder's response to this RFP, together with all addenda and clarifications shall become part of the contractual obligation and shall be incorporated by reference into the ensuing Agreement with the successful bidder.

1.16 Gratuities

The laws of Maine provide that it is a felony to offer, promise, or give anything of value or benefit to a State employee with the intent to influence that employee's acts, opinion, judgment, or exercise of discretion with respect to that employee's duties. Evidence of violations of this statute will be reported to the appropriate prosecuting attorney.

1.17 Conflicts Between Terms

MDOE reserves the right to accept or reject any exception taken by a bidder to the terms and conditions of this RFP. Should a successful bidder take exception to the terms and conditions required by the State, the bidder's exceptions may be rejected and the entire proposal declared non-responsive. These exceptions should be noted conspicuously and noted as exceptions to the RFP. MDOE may elect to negotiate with the successful bidder regarding Agreement terms that do not materially alter the substantive requirements of this RFP.

1.18 Maine Statutes and Rules

Maine Department of Administration and Financial Services, Division of Purchases Rules, Chapter 110, sets forth procedures for State of Maine procurement under which this RFP is issued. The terms and conditions of this RFP and the resulting Agreement(s) or activities based upon this RFP shall be construed in accordance with the laws of Maine.

1.19 Costs of Preparation of Proposal

No payments shall be made to cover direct, indirect or associated costs incurred by a prospective or successful bidder in the preparation of its proposal(s) in response to this RFP or any other submission made under this RFP.

1.20 News Release

News releases or other materials made available to the public, a bidder's clients, or potential clients pertaining to this procurement or any part of the proposal shall not be made without the prior written approval of MDOE.

1.21 Miscellaneous

MDOE reserves the right to accept or reject any or all proposals without penalty.

MDOE reserves the right to waive minor deficiencies and informalities if, in the judgment of MDOE, its best interests will be served. Failure to comply with a mandatory requirement is not a minor deficiency or informality that will be waived.

2 Operating Environment and General Requirements

2.1 Overview

The technical specifications and functional requirements in this RFP are organized in subsections that consist of the following 8 groupings, numbered to match the relevant subsection numbers as described in this Section of this RFP:

Section 2.2 Technical: This group of requirements represents the activities and functionalities needed to support the proposed system.

Section 2.3 Security: This group of requirements represents the activities and functionalities needed to enforce the required security and confidentiality requirements. Security is an infrastructure functionality that is a part of each of the functional groups.

Section 2.4 Data Integration: This group of requirements represents the activities and functionalities needed to integrate currently available information with the Education Portal. The purpose of this functional group is to minimize manual data entry for required content and information.

Section 2.5 Portal: This group of requirements represents the activities and functionalities related to the Education Portal.

Section 2.6 Data Exporting and Interface Requirements: This group of requirements represents the activities and functionalities related to integration of the Education Portal with external and third-party systems.

Section 2.7 SIF Requirements: This group of requirements represents the activities and functionalities needed to implement a Schools Interoperability Framework compliant data information system application. SIF is the preferred education data transmission process.

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Section 2.8 Training and Documentation Requirements: This group of requirements represents functionalities related to training and documentation for State and stakeholder end users.

2.2 Technical Requirements Overview

MDOE requires the Education Portal to integrate and complement existing information infrastructures and to allow for integration of future development tools. The Education Portal shall be a WEB based browser-based solution compatible with standard Microsoft Windows and Apple Mac operating system browsers. Bidders may offer an existing COTS product.

The Education Portal will be located at the State Office of Information Technology (OIT) data center in Augusta, Maine. Bidders may offer the option of remote hosting (see Section 3.5).

2.2.1 MDOE Technical Hardware and Software Requirements

Item #	Requirement
1	Provide a web portal that may be accessed without the need to install client software. For the purposes of this RFP ActiveX browser components and software plug-ins (e.g., Adobe Reader) are not considered client software for this requirement.
2	Database Server. Integrate with the Maine Department of Education data systems MS SQL Server databases. Any additional Relational Database Management System (RDBMS) licenses and server peripheral components required to support the selected solution shall be obtained through existing State Agreements by MDOE. These components must be identified in detail in the proposal, but MDOE will price them independently.
3	Client Workstations. Accommodate users accessing the system using either laptop or desktop hardware running current supported versions of Microsoft operating system, Apple operating system, Microsoft Office and Internet Explorer and supported versions of Apple Safari and current supported versions of Firefox (PC and Apple).
4	Network Services. Accommodate users with a minimum 56kBps-based Internet connection.
5	Data Integrity and Validity. Provide the ability to check data integrity and validity via various cross-referencing field verification checks.
6	Reduce Redundant Data Entry. Provide the ability to reduce redundant and irrelevant data entry and use forced choice entry techniques where applicable.
7	Microsoft Office Compatibility. Provide the ability to utilize Microsoft Office 2000 and its evolutionary replacement for spreadsheets, narratives, summaries, and face sheets (detailed history documents).
8	Demonstrate an application architecture and design consistent with current industry best practices and integrate with the current MDOE infrastructure. The database shall be scalable, hardware independent and support cross platform application operations.
9	Provide software assurance guarantees.
10	Provide an established process for migrating to new software releases.

2.3 Security Requirements

General Security Requirements. All security requirements will be governed by the State of Maine Information Technology Security Policy (<http://www.maine.gov/oit/policies/ITSecurityPolicy2008.pdf>). The requirements to manage the security and access Section of this RFP define the functionality to ensure the data concurrency and security in the system. Security must provide uniform roles throughout the system

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that ensure data integrity. Security shall be provided using the concept of application areas, each of which shall have application pages. The system shall also identify the page controls within each application page. Different privileges shall be defined on application areas, application pages, and page controls to ensure a comprehensive security for the application.

2.3.1 Security

This application must pass OIT Deployment Certification (<http://www.maine.gov/oit/policies/DeployCertPolicy.htm>) and undergo all relevant FERPA, HIPPA, Personal Identifiable Information (PII) certifications thru an independent third party assessment. All significant findings must be remediated by the appropriate responsible parties before the system is put into production.

Item #	Requirement
1	Provide the ability to timeout a user's screen with automatic timer for security.
2	Provide the capability of mass security updates.
3	Provide for the use of Secure Sockets Layer (SSL) encryption initially and Transport Layer Security (TLS) or other forms of comparable Advanced Encryption Standard (AES) encryption, for all transfer of student data between client and server.
4	Provide the ability to do mass updates to groups of users as needed.
5	Use a consistent security model throughout.

2.3.2 Logging and Access Rights

Item #	Requirement
1	Provide the capability to log into the portal.
2	Require the user's user name and password to log into the portal.
3	Mask the password with asterisks as the user types in the password.
4	Provide the capability to limit the number of log on failed attempts to three and then direct the user to a page indicating that log on failed.
5	Require the user to enter a new password if the old password has expired.
6	Provide the capability to notify the user if the user name or password is not valid.
7	Provide the ability for a user to reset his/her password.
8	Allow for security to be defined at login, sub-system, application, file, field, and user level.
9	Provide fully integrated security and access control capabilities, including single logon and customizable views for administrators.
10	Provide a security coding system to support multiple users with each user having a different password and different read and write access capabilities.
11	Allow LDAP integration for username and password administration.
12	Have the ability to build individual security profiles that users would be associated with, rather than

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	each individual having its own set of permissions.
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2.3.3 Managing Security and Access

Item #	Requirement
1	Provide the capability to add, change, or delete roles.
2	Provide the following roles: State Administrator and System Administrator. The State Administrator manages roles, users and organizational settings. The System Administrator manages the overall system configuration and settings including organizations and overall security.
3	Ensure that the system roles cannot be deleted.
4	Provide the capability to associate roles with a user.
5	Provide the capability for the System Administrator to add, change, or delete application areas and application pages.
6	Provide the capability to assign a role to an application area using a security setting of: <ul style="list-style-type: none"> • No access (NA); • Read only (R); • Edit/Read (ER); • Edit/Add/Read (EAR); and • Edit/Add/Read/Delete (EARD).
7	Provide the capability for the System Administrator role to add, change, or delete page controls (e.g., fields, check boxes, radio buttons) for each page.
8	Provide the capability for the System Administrator role to assign a role to a page control using a security setting of: NA, R, and ER. NA means the control shall not be displayed for that role; R means the control shall be displayed for read only (i.e., the user shall not be allowed to update the control's data); and ER means the control shall be displayed in its normal native format to allow the user to change the data value associated with the control.
9	Provide the capability for the System Administrator role to associate pages with an application area.
10	Provide security and administrative access distributed to users that works in conjunction with centralized administration.
11	Provide the capability for the System Administrator to create organizations. Organizations may be hierarchical.
12	Provide the ability to define which fields of a record a particular user or group can view and which they can edit.
13	Provide row level security using the underlying relationships between the users and organizations.
14	Provide for the capability to copy a role and its defined access rights.
15	Provide users the ability to post new data to the Education Portal via web browser per their account permissions.
16	Provide the capability to define the SMTP (Simple Message Transport Protocol) server user account and password that shall be used for email notifications.
17	Provide the ability to maintain an audit trail of transactions made in the Education Portal,

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	identifying who made the change, the type of change made, and the date / time the change was made. This shall be accomplished for addition, deletion, and edits. This shall include all security maintenance transactions. Both before and after image of data changes shall be captured in order to record the specific data elements that were modified.
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2.4 Data Integration Requirements

2.4.1 Overview of Data Integration

The Education Portal shall provide the capability to integrate with the Education Data Warehouse and other external data sources.

2.4.2 Ability to Integrate with MDOE Sources

Item #	Requirement
1	Provide the ability for the Education Portal to receive and display data from disparate internal and external data sources.
2	Provide the ability to integrate with the State Active Directory for passing credentials for identity and application access.

2.5 Portal Requirements

Item #	Requirement
1	Establish a statewide education portal as a single point of access to MDOE data applications.
2	Establish a standard open interface for single sign on security and single provisioning including the Security Services protocols which are integrated with Active Directory. Windows Server: <ul style="list-style-type: none">• Secure Sockets Layer (SSL) encryption initially and• Transport Layer Security (TLS) or• other forms of comparable Advanced Encryption Standard (AES) encryption, for all transfer of student data between client and server.
3	Establish a functional, extensible, and attractive navigation schema to unify navigation between MDOE provided applications.
4	Enable collaboration and workflow between users and other stakeholders, individually and within groups. The workflow must include the ability to authenticate, certify and/or electronically sign documents as verification of their content.
5	Provide content management for creating and publishing information to stakeholders.
6	Provide enterprise search of document repositories, business applications and websites.
7	Provide document management and storage integrated with workflow and collaboration.
8	Provide the ability to create and manage web forms, blogs and surveys for data collection and sharing.
9	Provide the ability to personalize content for shareholder groups.

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10	Leverage the existing state Active Directory to synchronize with a Microsoft SQL relational database and store authoritative information regarding users, organizations, and roles.
11	Deploy a directory management webpart to enable fully delegated management of users, organizations, and roles.

2.6 Data Exporting and Interface Requirements

2.6.1 Exporting Interface Functional Requirements

Item #	Requirement
1	Provide the ability to export data in a variety of standard formats (e.g., xls, csv, xml, txt, rtf, pdf) that can be integrated with other data systems.
2	Provide the ability for MDOE users to export data in a variety of standard formats (e.g., xls, csv, xml, txt, rtf, pdf) that can be integrated with other information available at the MDOE level. Security requirements shall certify that MDOE staff only has access to the appropriate data.

2.6.2 System Interface Requirements

Item #	Requirement
1	Be able to import and export data to and from third party software.
2	Provide the ability to support data integration and data sharing with other computer systems using SIF-certified applications or other industry standard protocols.
3	Provide the ability to receive, accept, and/or modify data from a variety of possible sources, such as scanning, keyboard entry, archived records, and external sources such as the Web.
4	Be able to store specified export routines for later use and modification.

2.7 Schools Interoperability Framework (SIF) Requirements

This section is required for vendors that are proposing SIF certified or compliant systems. It is optional for bidders proposing alternative data interoperability systems.

2.7.1 SIF Certification

Item #	Requirement
1	Please list SIF Certified applications that will be provided by your company as part of this proposal (as posted on SIF Certification Registry: http://www.opengroup.org/sif/cert/register.html).
2	Please list applications that will be provided by your company as part of this proposal that are not SIF Certified but that have SIF agents available. When do you intend to have these applications certified as SIF Certified?

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Item #	Requirement
3	For each SIF Certified application, please supply a copy of the Conformance Statement Questionnaire that you completed as part of your Certification Application.
4	For each application that has a SIF agent but is not yet SIF Certified please provide a description of each agent's functionality in complete detail.

2.7.2 SIF Experience

Item #	Requirement
1	Describe the implementation and support services available from your company during deployment of the SIF certified applications that will be provided as part of this proposal.
2	Describe the functions(s) supported by your application(s) (i.e., subscriber, provider, etc.).
3	Please list other agent vendors and/or SIF certified applications that are known to have been deployed by state education agencies that have implemented your SIF certified applications that will be provided as part of this proposal.
4	Please list the SIF data objects available in the SIF certified applications that will be provided as part of this proposal.
5	Please name the zone integration server(s) that have been tested for use or that existing customers have used during deployment of the SIF certified applications that will be provided as part of this proposal.
6	List at least three reference state education agencies and/or school units that have purchased and/or deployed your SIF certified application. Please provide customer contacts for each reference.
7	How many total customers do you have that have purchased and/or deployed your SIF certified applications that will be provided as part of this proposal? Note that a comprehensive confidential list of clients may be requested if your organization is chosen for further consideration.

2.7.3 Agent Costs

Item #	Requirement
1	Are costs for your agent(s) included in the costs for your software or are they separate costs?
2	How are upgrades to your agent(s) priced?
3	Describe installation support.
4	Describe on-going support.
5	Are upgrades included in software maintenance or annual service agreement?

2.7.4 Zone Integration Server (ZIS)

Item #	Requirement
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Item #	Requirement
1	Does your company provide or market a Zone Integration Server (ZIS)? (If no, proceed to section 2.8.5.)
2	Identify the version(s) of the SIF Specification that the ZIS supports.
3	Please provide a list of references from these implementations that we can contact.
4	Does your proposal include the cost of the ZIS and implementation?
5	Describe the training and support provided (documentation, phone support, etc.).
6	What additional software needs to be installed and operational in order for your ZIS to run properly?

2.7.5 SIF Association Participation

Item #	Requirement
1	Please provide your original date of SIF membership.
2	List leadership positions held by staff in your organization as part of the Schools Interoperability Framework organization, including working groups.
3	List SIF working groups in which your company actively participates and staff hours of company involvement in each working group.
4	List any and all SIF activities in which you have participated, including Developers Camps, Connect-a-Thons, conference and trade show demonstrations, and quarterly and annual meetings.

2.7.6 SIF Support

Item #	Requirement
1	Will your company assist the MDOE in using SIF to interface your application with other internal and external legacy information systems used by the MDOE?
2	What support does your company provide for agent specific questions? Describe your escalation procedures.
3	What specific training, support and development assistance will be provided?

2.8 Training and Documentation Requirements

2.8.1 Overview of Training

The MDOE will require training and support to MDOE personnel and other stakeholders to ensure successful implementation and utilization of the Education Portal. This training shall include general navigation of the application interface, generating and understanding reports, implementing security

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administration, troubleshooting system problems, maintaining database and integrity of system, and backup procedures.

2.8.2 Training and Documentation

Item #	Requirement
1	Provide up to two weeks of system administration training to MDOE personnel. The training should include at a minimum: <ul style="list-style-type: none">• Managing security and user access;• Maintenance and supporting the Education Portal;• Adding applications and websites;• Updating and adding the ETL process with external databases;• Creating web forms, blogs and surveys;• Creating, publishing and managing content;• Creating and managing workflow processes;• Managing enterprise search;• Exporting and importing data; and• Maintaining and updating training and online help documentation.
2	Provide up to four weeks of end-user/stakeholder training utilizing: instructor-led classes, live web classes, and recorded web classes. Training should include at a minimum: <ul style="list-style-type: none">• Using/navigating the Education Portal;• Viewing and downloading content and documents;• Accessing State, school unit and school level reports;• Accessing applications; and• Using online help features.
3	Provide context-sensitive online help for system administration users and end-users.
4	Provide electronic copies of all system administration and end-user training materials in Word and PDF formats.
5	Provide the ability to meet the State of Maine standards for technical and program documentation.
6	Provide to MDOE electronic copies of all necessary documentation to facilitate ongoing maintenance of the system after implementation.
7	Provide to MDOE attendee lists for all on-site and on-line training sessions.

3 Instructions for Submitting Proposal

3.1 Cover Letter

Provide a cover letter to the proposal that includes the following:

3.1.1 Name and Address

Provide the name and address of the prime bidder. Names and addresses of all subcontracted providers must also be included.

3.1.2 Guarantee

Provide a statement guaranteeing that the bidder can and will meet the August 1, 2010, implementation date for the project.

3.1.3 Signature

Provide a signature and title, in the cover letter, of the person empowered to bind the prime bidder.

3.2 Technical Proposal

Submit a technical proposal explaining how the bidder will meet the requirements detailed in Section 2 of this RFP. Proposed solutions must be correlated, by number, to the appropriate sections outlined in Section 2.

Identify and describe in detail the hardware and software necessary to install, run, and support the system being proposed including testing and/or training environments.

If any component of the proposed system is not compatible with the development and operating environments documented in Section 2.2 of this RFP, the bidder must indicate what additional tools and equipment will be required and include an estimate for the procurement, installation, and support of these tools and equipment. In the event the provider cannot guarantee a August 1, 2010 implementation date, a proposed implementation date is required. MDOE is under no obligation to consider a proposal that does not comply with section 3.1.2, but may do so at its discretion based on the number and quality of responses.

The bidder must provide a warranty of at least one year on the system and all products provided by the bidder. The warranty period begins when MDOE has accepted the delivery of the system, and shall cover the diagnosis and fixing of all system features and functions that do not operate as stated in this RFP and in the bidder's documentation.

The bidder must also provide a warranty that the software used to implement the system proposed is bug free for a period of one year after the product is delivered in final form or until MDOE enters into an Agreement with another vendor for further modifications of the software, whichever is shorter. This means that once the software is delivered, the bidder must be willing to fix, at no charge to MDOE, any faults the software may exhibit for a period of one year.

3.3 Work Plans and Timelines

Provide a description of how the bidder plans to interact with MDOE staff and bidder requirements of MDOE.

3.3.1 Project Work Plan

Provide a work plan outlining the steps being taken in each category:

- Design, Development, Implementation, Acceptance Testing and Production Cutover and Stabilization

The work plan must include:

- The steps required;
- Detailed descriptions of the deliverables in each step;
- The level of effort for each deliverable;
- Proposed time frames;
- Bidder staff requirements;

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- MDOE staff requirements including skill levels required, and time commitments to accomplish a successful implementation of the system, including conversion of MDOE data, and customizations needed to meet MDOE business needs; and
- How the bidder will provide the necessary interaction with MDOE staff to help modify workflows around the proposed system and define and implement required enhancements.

3.4 Bidder Qualifications

Provide a brief history of the bidder's company including a general company overview, background, and ownership.

If this is to be a joint bidder proposal, or the bidder intends to utilize the services of a subcontractor or subcontractors, include a narrative description of the considerations and benefits of such an approach.

3.4.1 Bidder Experience

3.4.1.1 Systems Development Experience

Provide a detailed narrative description of the bidder's experience with portal development and support within the last three (3) years.

3.4.1.2 Project Commitment

Describe the current project commitment, and the total number of full-time employees being dedicated to this project for MDOE.

3.4.1.3 Bidder Staff Qualifications

The bidder must commit dedicated, skilled personnel to MDOE to provide professional services. MDOE shall retain the right to reject any of the Provider's employees whose qualifications, in the reasonable, good faith judgment of MDOE, do not meet the standards established by the MDOE as necessary for the performance of the Agreement. During the course of the Agreement, the MDOE reserves the right to require the Provider to reassign or otherwise remove any Provider employees found unacceptable by MDOE. The bidder must provide a completed list of qualified employees and/or subcontractors who will work on this project, and an outline of the structure of the team and the names of specific key employees that will be assigned to work on this project. Bidder staff qualifications must be completed and submitted with the proposal. Failure to do so will result in a bidder losing points in the scoring process.

3.4.1.4 Client References

Provide a comprehensive list of clients, including contact information, for whom the bidder has provided similar services within the last three (3) years; include the dates when services were provided. MDOE may contact clients from the list as references for the bidder.

3.4.2 Financial Responsibility

Provide financial documentation as evidence of adequate financial stability. In the event a bidder is either substantially or wholly owned by another corporate entity, the bidder must also include the most recent detailed financial report of the parent organization and a statement that the parent organization will unconditionally guarantee performance by the bidder on each and every term, covenant, and condition of such Agreement as may be executed by the parties. Any proposed subcontractors, whose percentage of work to be performed (measured as percentage of total Agreement price) equals or exceeds 20 percent, must submit the required information also.

3.4.2.1 Financial Summary

Provide a financial summary of financial performance over the most recent three (3) years of operation, including the following:

Highlights of the year:

- Revenue
- Net Operating Income
- Earnings Before Income Taxes

At year end:

- Total Assets
- Working Capital
- Long Term Debt
- Stockholders' Equity
- Number of Employees

3.4.2.2 Financial Stability

One of two responses is required in this subsection, depending upon whether the firm is publicly held (Section 3.4.2.2.1) or not (Section 3.4.2.2.2). Additionally, all proposals must include a response to the requirements of Section 3.4.2.2.3.

3.4.2.2.1 Publicly Held

If the bidder is a publicly held corporation, enclose a copy of the corporation's most recent three (3) years of audited financial reports and financial statements and the name, address and telephone number of a responsible representative of the bidder's principal financial or banking organization. The bidder must also disclose any and all judgments, pending or expected litigation, or other real or potential financial reversals that might materially affect the viability or stability of the organization; or warrant that no such condition is known to exist. The bidder must submit a complete Dunn and Bradstreet credit report dated not more than thirty (30) days prior to the proposal submission. If this requirement is not met, the bidder must explain why and the Evaluation Committee will consider this during the evaluation.

3.4.2.2.2 Not Publicly Held

If the bidder is not a publicly held corporation, the bidder may either comply with the preceding subsection or:

- a. Describe the organization, including size, longevity, client base, areas of specialization and expertise, and any other pertinent information in such a manner that the Evaluation Committee may reasonably formulate a determination about the stability and financial strength of the organization;
- b. Provide a banking reference;
- c. If available, provide a complete Dunn and Bradstreet credit report dated not more than thirty (30) days prior to the proposal submission; and
- d. Disclose any and all judgments, pending or expected litigation, or other real or potential financial reversals that might materially affect the viability or stability of the bidding organization; or warrant that no such condition is known to exist.

3.4.2.2.3 Change In Ownership

If any change in ownership or control of the company is anticipated during the twelve (12) months following the proposal due date, describe the circumstances of such change and indicate when the change will likely occur.

3.5 Cost Proposal

Bidders are required to give a firm, fixed price quotation for the work to be done to complete this RFP. This RFP is to be based on fixed discrete, concrete deliverables (consistent with the Appendix B – Cost Proposal Form format). As part of negotiating an Agreement, a formal, written payments process will be identified and indexed to these deliverables with an acceptance sign-off procedure based on the cost proposal submitted.

Include all costs for the proposal as completed by the required implementation date of August 1, 2010.

Costs must be allocated to the following sequential parts of the project:

- Design,
- Development,
- Implementation,
- Acceptance Testing, and
- Production Cutover and Stabilization.

For each of these parts of the project, the identified costs should be attributed to the deliverables that are included in the project work plan as outlined in Section 3.3.1 of this RFP.

Cost Proposals must also include associated costs for hardware and software necessary to implement the system including production and testing/training environments. Any additional Relational Database Management System (RDBMS) licenses and server peripheral components required to support the selected solution shall be obtained through existing State Agreements by MDOE. These components must be identified in detail in the proposal, but MDOE will price them independently. Cost proposals may include optional annual hosting costs and annual support and maintenance costs (including training) as separate line items on Appendix B – Cost Proposal Form. Cost Proposals must be on the form provided in Appendix B – Cost Proposal Form.

Optional Costs – Remote Hosting

In addition to proving costs and hardware configurations for hosting the Education Portal at the OIT data center in Augusta, bidders may propose optional costs for hosting the system at a remote vendor site. Cost Proposals for Remote Hosting must be on separate sheets of paper attached to the Cost Proposal Form in Appendix B with the title “Optional Costs - Remote Hosting”. The costs for remote hosting will not be scored nor will it have any weight in determination of the award for the integrated data management system.

The State of Maine’s Remote Hosting Policy can be viewed at <http://www.maine.gov/oit/policies/RemoteHostingPolicy.htm>.

3.6 Bidder Comments

Bidders are encouraged to include any comments that might further clarify their proposal.

3.7 Proposal Organization

To ensure consistency of presentation, to ensure that MDOE personnel can easily find required information, and to ensure that all requirements have been addressed MDOE requests that proposals be organized as follows:

- a. Cover Letter as described in Section 3.1,
- b. Technical Proposal as outlined in Section 3.2,
- c. Work Plan and Timelines as outlined in Section 3.3,
- d. Bidder Qualifications as outlined in Section 3.4, and
- e. Cost Proposal as outlined in Section 3.5 in separate sealed envelope (Appendix B –Cost Proposal Form).

4 Proposal Evaluation Process

4.1 Proposal Evaluation Process

An Evaluation Committee consisting of MDOE personnel and consultants will evaluate all responses to this RFP. Accepted proposals will be reviewed to initially determine if minimum submission requirements have been met. The review will verify that the proposal was received by the date and time specified in **Section 1.7 Preparation of the Proposal** with the correct number of copies and the presence of all required signatures, and that the proposal is sufficiently responsive to the needs outlined in the RFP to permit a complete evaluation. Failure to meet minimum submission requirements could result in the proposal being rejected and not included in the evaluation process.

Upon receipt, the proposal information will be disclosed to the Evaluation Committee members only. Bidders may not contact members of the Evaluation Committee except at the request of the MDOE RFP administrator.

4.2 Evaluation of Proposals

Accepted proposals will be evaluated by the Evaluation Committee based on the bidders' responses to the requirements detailed in Section 2. Scoring shall include information obtained by reviewing the bidder's proposal documents, and contacting references. The Evaluation Committee shall be under no obligation to contact bidders for clarification of proposals, but shall reserve the right to do so at any time prior to Agreement award.

At the option of the Evaluation Committee, a test and evaluation (T&E) may be conducted. Each proposal will be evaluated on the basis of the categories below. A point score will be established for each response in each category. Based on the results of the evaluation, the proposals determined to be most advantageous to MDOE, taking into account all of the evaluation factors, will be selected by MDOE.

1. Bidder Qualifications: **Total Possible: 30 pts**

- Qualifications of bidder employees or subcontractors assigned to work on this project
- Client list from the past three (3) years from which MDOE may select references

2. Demonstrated Understanding of RFP Section 2 requirements **Total Possible: 45 pts**

- Strategy and work plan
- Ability to meet specified deadlines
- Outline of the work, demonstrating satisfaction of all technical requirements or alternatives suggested
- Clarity of proposal
- Test & Evaluation (if required)

3. Cost **Total Possible: 25 pts**

- The lowest bid will receive the entire 25 points
- Each of the other bids will receive a share of the 25 points based on the following formula: $\frac{\text{Lowest bid}}{\text{Bid}} \times 25 = \text{points}$

RFP Total Possible: 100

4.3 Test and Evaluation

One or more of the bidders who achieve the highest score (the finalists) may be required:

1. To provide a live demonstration of its proposed solution, preferably in an educational setting;
2. To make its solution available to a MDOE-designated team who will conduct a series of hands-on tests to evaluate functional capabilities as pertain to the goals of this RFP; or
3. Both 1 and 2.

The need, if any, for this Test and Evaluation (T&E) stage will be determined by the Evaluation Committee after completing the evaluation of proposals specified in Section 4.2 of this RFP. For this stage of the evaluation and at short notice (perhaps as soon as 3 business days), each finalist must be prepared to make its proposed solution available to the Evaluation Committee at a bidder site agreed upon by the bidder and MDOE. During this T&E period, the bidder's proposed project manager and other senior staff must make any requested presentation.

If this T&E stage is conducted, the Evaluation Committee will further assess and validate the functionality and effectiveness of each finalist's proposal through bidder demonstrations, MDOE hands-on tests or both. This assessment and validation may result in changes to the scores of a finalist's proposal by the Evaluation Committee.

4.4 Final Scoring

The finalist who achieves the highest score – that is whose proposal reflects the best value offer to MDOE - will be awarded the Agreement subject to successful Agreement negotiations and required Agreement approvals.

5 Appendices

5.1 Appendix A - Cost Proposal Form

All costs necessary for implementing and running the proposed system must be identified.

COST PROPOSAL <u>PROJECT COST</u>	Proposed	Proposed	Proposed	Proposed	Proposed	Proposed	Proposed	Bidders may insert additional columns as needed	Total
	Deliverable #	Deliverable #	Deliverable #	Deliverable #	Deliverable #	Deliverable #	Deliverable #		
Project Initiation									\$0.00
Planning and Design									\$0.00
Development and Testing									\$0.00
Rollout and Training									\$0.00
Production Cutover/Stabilization									\$0.00
Total	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Software Licenses									
Grand Total									
Annual License, Maintenance & Support Costs (includes training)									
Software Costs (list details)									
Hardware (list details)									
Hosting Costs (Optional)									
SIF Agent and ZIS Costs									

Signature

5.2 Appendix B - SIF Data Format Technical Information

www.sifinfo.org

5.3 Appendix C - Supporting Policy Documents

FERPA can be found at the following website:

<http://www.ed.gov/offices/OM/fpco/ferpa/index.html>

HIPAA can be found at the following website:

<http://www.hhs.gov/ocr/hipaa/>

Maine Revised Statutes Annotated Title 20-A: Education can be found at the following website:

<http://janus.state.me.us/legis/statutes/20-A/title20-Ach0sec0.html>

Maine Web Accessibility Policy can be found at the following website:

<http://www.maine.gov/oit/accessibility/policy/webpolicy.htm>

Maine Web Standards can be found at the following website:

http://www.maine.gov/oit/accessibility/purchasing_memo.html

The State of Maine Information Technology Security Policy can be found at:

<http://www.maine.gov/oit/policies/ITSecurityPolicy2008.pdf>

The State of Maine's Remote Hosting Policy can be found at:

<http://www.maine.gov/oit/policies/RemoteHostingPolicy.htm>

Architecture Compliance Policy can be found at the following website:

<http://www.maine.gov/oit/policies/ArchitectureCompliancePolicy.html>

State of Maine Information Technology Environment can be found at the following website:

<http://maine.gov/oit/architecture/SomITEnv/index.html>

Domains and Bricks can be found at the following website:

<http://maine.gov/oit/architecture/DomainsAndBricks/index.html>

Deployment Certification Policy for Major Application Projects can be found at the following website:

<http://maine.gov/oit/architecture/DomainsAndBricks/index.html>

5.6 Appendix D – Standard Agreement

AdvantageME CT No: _____

STATE OF MAINE
DEPARTMENT OF _____
Agreement to Purchase Services

THIS AGREEMENT, made this _____ day of _____, _____, is by and between the State of Maine, _____, hereinafter called “Department,” and _____, located at _____, telephone number _____, hereinafter called “Provider”, for the period of _____ to _____.

The AdvantageME Vendor/Customer number of the Provider is _____

WITNESSETH, that for and in consideration of the payments and agreements hereinafter mentioned, to be made and performed by the Department, the Provider hereby agrees with the Department to furnish all qualified personnel, facilities, materials and services and in consultation with the Department, to perform the services, study or projects described in Rider A, and under the terms of this Agreement. The following riders are hereby incorporated into this Agreement and made part of it by reference:

Rider A - Specifications of Work to be Performed
Rider B-IT - Payment and Other Provisions
Rider C – Exceptions to Rider B-IT
Rider D, E, and/or F – (At Department’s Discretion)
Rider G – Identification of Country in Which Contracted Work will be Performed

WITNESSETH, that this contract is consistent with Executive Order 17 FY 08/09 or a superseding Executive Order, and complies with its requirements.

IN WITNESS WHEREOF, the Department and the Provider, by their representatives duly authorized, have executed this agreement in _____ original copies.

DEPARTMENT OF _____

By: _____
Name and Title, Department Representative

and

By: _____
Name and Title, Provider Representative

Total Agreement Amount: \$ _____

Approved: _____

Chair, State Purchases Review Committee

BP54 (Rev 9/07) – (Rev Rider B-IT 6/30/09)

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AdvantageME ACCOUNT CODING

VC NUMBER	DOC TOTAL	FND	DEPT	UNIT		SUB UNIT		OBJ		JOB NO.	PROGRAM

VC NUMBER	DOC TOTAL	FND	DEPT	UNIT		SUB UNIT		OBJ		JOB NO.	PROGRAM

VC NUMBER	DOC TOTAL	FND	DEPT	UNIT		SUB UNIT		OBJ		JOB NO.	PROGRAM

VC NUMBER	DOC TOTAL	FND	DEPT	UNIT		SUB UNIT		OBJ		JOB NO.	PROGRAM

VC NUMBER	DOC TOTAL	FND	DEPT	UNIT		SUB UNIT		OBJ		JOB NO.	PROGRAM

VC NUMBER	DOC TOTAL	FND	DEPT	UNIT		SUB UNIT		OBJ		JOB NO.	PROGRAM

VC NUMBER	DOC TOTAL	FND	DEPT	UNIT		SUB UNIT		OBJ		JOB NO.	PROGRAM

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RIDER A
SPECIFICATIONS OF WORK TO BE PERFORMED

RIDER B-IT

METHOD OF PAYMENT AND OTHER PROVISIONS

1. **AGREEMENT AMOUNT** \$ _____

2. **INVOICES AND PAYMENTS** The Department will pay the Provider as follows:

Invoices for payment, submitted on forms approved by the Department, shall be submitted to the Agreement Administrator. Invoices shall contain sufficient detail to allow proper cost allocation and shall be accompanied by supporting documentation. No invoice will be processed for payment until approved by the Agreement Administrator.

Payments are subject to the Provider's compliance with all items set forth in this Agreement. The Department will pay the Provider within thirty (30) days following the receipt of an approved invoice. The Department may withhold a Retainage for project-based services in the following manner:

- The allowable payment amount from each project milestone payment will be multiplied by ten (10) percent, giving the amount that will be withheld from payment. Ninety (90) percent of the allowable project milestone payment amount will be paid to the Provider.
- The Retainage will be held by the Department until the end of the warranty period.

The charges described in this Agreement are the only charges to be levied by the Provider for the products and services to be delivered by it. There are no other charges to be made by the Provider to the Department, unless they are performed in accordance with the provisions of Section 5, Changes in the Work. The Provider shall maintain documentation for all charges against the Department under this Agreement.

3. **INDEPENDENT CAPACITY** In the performance of this Agreement, the Provider shall act in the capacity of an independent contractor and not as an employee or agent of the State.

4. **AGREEMENT ADMINISTRATOR** The Agreement Administrator is the Department's representative for this Agreement. S/he is the single authority to act on behalf of the Department for this Agreement. S/he shall approve all invoices for payment. S/he shall make decisions on all claims of the Provider. The Provider shall address all correspondence, notification, progress report, etc. to the Agreement Administrator. The following person is the Agreement Administrator for this Agreement:

Name: _____
Title: _____
Address: _____

5. **CHANGES IN THE WORK** The Department may order changes in the work, the Agreement Amount being adjusted accordingly. Any monetary adjustment or any substantive change in the work shall be in

the form of an amendment signed by both parties and approved by the State Purchases Review Committee. Said amendment must be effective prior to the execution of the changed work.

6. SUBCONTRACTORS The Provider may not enter into any subcontract for the work to be performed under this Agreement without the express written consent of the Department. This provision shall not apply to contracts of employment between the Provider and its employees.

The Provider is solely responsible for the performance of work under this Agreement. The approval of the Department for the Provider to subcontract for work under this Agreement shall not relieve the Provider in any way of its responsibility for performance of the work.

All Subcontractors shall be bound by the terms and conditions set forth in this Agreement. The Provider shall give the State immediate notice in writing of any legal action or suit filed, and prompt notice of any claim made against the Provider by any Subcontractor, which may result in litigation related in any way to this Agreement, or which may affect the performance of duties under this Agreement. The Provider shall indemnify and hold harmless the Department from and against any such claim, loss, damage, or liability as set forth in Section 16, State held Harmless.

7. SUBLETTING, ASSIGNMENT OR TRANSFER The Provider shall not sublet, sell, transfer, assign, or otherwise dispose of this Agreement, or any portion thereof, or of its right, title, or interest therein, without the written approval of the Department. Such approval shall not in any case relieve the Provider of its responsibility for performance of work under this Agreement.

8. EQUAL EMPLOYMENT OPPORTUNITY During the performance of this Agreement, the Provider certifies as follows:

1. The Provider shall not discriminate against any employee or applicant for employment relating to this Agreement because of race, color, religious creed, sex, national origin, ancestry, age, physical or mental disability, or sexual orientation, unless related to a *bona fide* occupational qualification. The Provider shall take affirmative action to ensure that applicants are employed, and employees are treated during employment, without regard to their race, color, religion, sex, age, national origin, physical or mental disability, or sexual orientation.

Such action shall include but not be limited to the following: employment, upgrading, demotions, or transfers; recruitment or recruitment advertising; layoffs or terminations; rates of pay or other forms of compensation; and selection for training including apprenticeship. The Provider agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.

2. The Provider shall, in all solicitations or advertising for employees placed by, or on behalf of, the Provider, relating to this Agreement, state that all qualified applicants shall receive consideration for employment without regard to race, color, religious creed, sex, national origin, ancestry, age, physical or mental disability, or sexual orientation.

3. The Provider shall send to each labor union, or representative of the workers, with which it has a collective bargaining agreement, or other agreement or understanding, whereby it is furnished with labor for the performance of this Agreement, a notice to be provided by the contracting agency, advising the said labor union or workers' representative of the Provider's commitment under this section, and shall post copies of the notice in conspicuous places, available to employees and applicants for employment.

4. The Provider shall inform the contracting Department's Equal Employment Opportunity Coordinator of any discrimination complaints brought to an external regulatory body (Maine Human Rights Commission, EEOC, Office of Civil Rights, etc.) against itself by any individual, as well as any lawsuit regarding alleged discriminatory practice.
5. The Provider shall comply with all aspects of the Americans with Disabilities Act (ADA) in employment, and in the provision of service, to include accessibility and reasonable accommodations for employees and clients.
6. Contractors and Subcontractors with contracts in excess of \$50,000 shall also pursue in good faith affirmative action programs.
7. The Provider shall cause the foregoing provisions to be inserted in any subcontract for any work covered by this Agreement so that such provisions shall be binding upon each Subcontractor, provided that the foregoing provisions shall not apply to contracts or subcontracts for standard commercial supplies or raw materials.

9. EMPLOYMENT AND PERSONNEL The Provider shall not engage any person in the employ of any State Department or Agency in a position that would constitute a violation of 5 MRSA § 18 or 17 MRSA § 3104. The Provider shall not engage on a full-time, part-time, or any other basis, during the period of this Agreement, any personnel who are, or have been, at any time during the period of this Agreement, in the employ of any State Department or Agency, except regularly retired employees, without the written consent of the State Purchases Review Committee. Further, the Provider shall not engage on this project on a full-time, part-time, or any other basis, during the period of this Agreement, any retired employee of the Department, who has not been retired for at least one year, without the written consent of the State Purchases Review Committee. The Provider shall cause the foregoing provisions to be inserted in any subcontract for any work covered by this Agreement, so that such provisions shall be binding upon each Subcontractor, provided that the foregoing provisions shall not apply to contracts or subcontracts for standard commercial supplies or raw materials.

10. STATE EMPLOYEES NOT TO BENEFIT No individual employed by the State at the time this Agreement is executed, or any time thereafter, shall be admitted to any share or part of this Agreement, or to any benefit that might arise there from, directly or indirectly, that would constitute a violation of 5 MRSA § 18 or 17 MRSA § 3104. No other individual employed by the State at the time this Agreement is executed, or any time thereafter, shall be admitted to any share or part of this Agreement, or to any benefit that might arise there from, directly or indirectly, due to his employment by, or financial interest in, the Provider, or any affiliate of the Provider, without the written consent of the State Purchases Review Committee. The Provider shall cause the foregoing provisions to be inserted in any subcontract for any work covered by this Agreement so that such provisions shall be binding upon each Subcontractor, provided that the foregoing provisions shall not apply to contracts or subcontracts for standard commercial supplies or raw materials.

11. NO SOLICITATION The Provider certifies that it has not employed or contracted with any company or person, other than for assistance with the normal study and preparation of a proposal, to solicit or secure this Agreement, and that it has not paid, or agreed to pay, any company or person, other than a *bona fide* employee working solely for the Provider, any fee, commission, percentage, brokerage fee, gifts, or any other consideration, contingent upon, or resulting from, the award of this Agreement. For breach or violation of this provision, the Department shall have the right to terminate this Agreement without liability or, at its discretion, to otherwise recover the full amount of such fee, commission, percentage, brokerage fee, gift, or contingent fee.

12. ACCOUNTING, RECORDS, AND AUDIT

1. The Provider shall maintain all books, documents, payrolls, papers, accounting records, and other evidence pertaining to this Agreement, including interim reports and working papers, and make such materials available at its offices at all reasonable times during the period of this Agreement, and for a period of five (5) years following termination or expiration of the Agreement. If any litigation, claim or audit is started before the expiration of the 5-year period, the records must be retained until all litigation, claims or audit findings involving the agreement have been resolved.
2. Unless the Department specifies in writing a shorter period of time, the Provider agrees to preserve and make available all documents and records pertaining to this Agreement for a period of five (5) years from the date of termination of this Agreement.
3. Records involving matters in litigation shall be kept for one year following the termination of litigation, including all appeals.
4. Authorized Federal and State representatives shall have access to, and the right to examine, all pertinent documents and records during the five-year post-Agreement period. During the five-year post-Agreement period, delivery of, and access to, all pertinent documents and records will be at no cost to the Department.
5. The Provider shall be liable for any State or Federal audit exceptions, if applicable, that arise out of any action, inaction, or negligence by the Provider. In the event of an audit exception for which the Provider is liable, the Provider shall have thirty (30) days to remedy that exception. If the Provider fails to remedy that exception within this time period, the Provider shall immediately return to the Department all payments made under this Agreement which have been disallowed in the audit exception.
6. Authorized State and Federal representatives shall at all reasonable times have the right to enter the premises, or such other places, where duties under this Agreement are being performed, to inspect, monitor, or otherwise evaluate, the work being performed. All inspections and evaluations shall be performed in such a manner that will not compromise the work unreasonably.

13. TERMINATION The performance of work under this Agreement may be terminated by the Department in whole or in part, whenever, for any reason the Agreement Administrator shall determine that such termination is in the best interests of the Department. Any such termination shall be effected by the delivery to the Provider of a Notice of Termination specifying the extent to which the performance of work under this Agreement is terminated, and the date on which such termination becomes effective. The Agreement shall be equitably adjusted to compensate for such termination and modified accordingly.

Upon receipt of the Notice of Termination, the Provider shall:

1. Stop work under this Agreement on the date and to the extent specified in the Notice of Termination;

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2. Take such action as may be necessary, or as the Agreement Administrator may direct, for the protection and preservation of the property, information, and data related to this Agreement, which is in the possession of the Provider, and in which the Department has, or may acquire, an interest;
3. Terminate all orders to the extent that they relate to the performance of the work terminated by the Notice of Termination;
4. Assign to the Department in the manner, and to the extent directed by the Agreement Administrator, all of the rights, titles, and interests of the Provider under the orders so terminated, in which case the Department shall have the right, at its discretion, to settle or pay any or all claims arising out of the termination of such orders;
5. With the approval of the Agreement Administrator, settle all outstanding liabilities and claims, arising out of such termination of orders, the cost of which would be reimbursable in whole or in part, in accordance with the provisions of this Agreement;
6. Transfer title to the Department (to the extent that title has not already been transferred) and deliver in the manner, at the times, and to the extent directed by the Agreement Administrator, equipment and products purchased pursuant to this Agreement, and all files, source code, data manuals, or other documentation, in any form, that relate to all the work completed, or in progress, prior to the Notice of Termination;
7. Complete the performance of such part of the work as shall not have been terminated by the Notice of Termination; and
8. Proceed immediately with the performance of the preceding obligations, notwithstanding any delay in determining or adjusting the amount of any compensation under this section.

Notwithstanding the above, nothing herein shall limit the right of the Department to pursue any other legal remedies against the Provider.

14. GOVERNMENTAL REQUIREMENTS The Provider shall comply with all applicable governmental ordinances, laws, and regulations.

15. GOVERNING LAW This Agreement shall be governed by, interpreted, and enforced in accordance with the laws, statutes, and regulations of the State of Maine, without regard to conflicts of law provisions. The provisions of the United Nations Convention on Contracts for the International Sale of Goods and of the Uniform Computer Information Transactions Act shall not apply to this Agreement. Any legal proceeding against the Department regarding this Agreement shall be brought in the State of Maine in a court of competent jurisdiction.

16. STATE HELD HARMLESS The Provider shall indemnify and hold harmless the Department and its officers, agents, and employees from and against any and all claims, liabilities, and costs, including reasonable attorney fees, for any or all injuries to persons or property or claims for money damages, including claims for violation of intellectual property rights, arising from the negligent acts or omissions of the Provider, its employees or agents, officers or Subcontractors in the performance of work under this Agreement; provided, however, the Provider shall not be liable for claims arising out of the negligent acts or omissions of the Department, or for actions taken in reasonable reliance on written instructions of the Department.

17. LIMITATION OF LIABILITY The Provider's liability for damages sustained by the Department as the result of Provider's default or acts or omissions in the performance of work under this Agreement, whether such damages arise out of breach, negligence, misrepresentation, or otherwise, shall be no greater than:

1. Damages for violation or infringement of any copyright or trademark;
2. Damages for bodily injury (including death) to persons, and damages for physical injury to tangible personal property or real property; and
3. The amount of any other actual direct damages up to the greater of \$500,000 or three times the value of the Product or Service that is the subject of the claim, up to a maximum of \$25,000,000. For example, if the Product or Service that is the subject of the claim was valued at \$15,000,000, then the Provider would be liable for no more than \$25,000,000. For purposes of this subsection, the term "Product" would typically include the following, but not be limited to, Materials, Source Code, Machine Code, and Licenses.

Notwithstanding the above, Provider shall not be liable for any indirect or consequential damages.

18. NOTICE OF CLAIMS The Provider shall give the Agreement Administrator immediate notice in writing of any legal action or suit filed related in any way to this Agreement, or which may affect the performance of duties under this Agreement, and prompt notice of any claim made against the Provider by any Subcontractor, which may result in litigation related in any way to this Agreement, or which may affect the performance of duties under this Agreement.

19. APPROVAL This Agreement must be approved by the State Controller and the State Purchases Review Committee before it can be considered a valid enforceable document.

20. INSURANCE REQUIREMENTS The Provider shall procure and maintain, for the duration of the Agreement, insurance against claims for injuries to persons, or damages to property, which may arise from, or in connection with, the fulfillment of this Agreement by the Provider, its agents, representatives, employees, or Subcontractors.

1. **Minimum Coverage**

1. Commercial general liability (including products, completed operations, and broad-form contractual): \$1,000,000 per occurrence;
2. Workers' Compensation and employer's liability: as required by law;
3. Professional liability: \$1,000,000; and
4. Property (including contents coverage for all records maintained pursuant to this Agreement): \$1,000,000 per occurrence.

2. **Other Provisions** Unless explicitly waived by the Department, the insurance policies should contain, or be endorsed to contain, the following provisions:

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1. The Provider's insurance coverage shall be the primary insurance. Any insurance or self-insurance maintained by the Department for its officers, agents, and employees shall be in excess of the Provider's insurance and shall not contribute to it.
2. The Provider's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.
3. The Provider shall furnish the Department with certificates of insurance and with those endorsements, if any, effecting coverage required by these Insurance Requirements. The certificates and endorsements for each insurance policy are to be signed by a person authorized by the insurer to bind coverage on its behalf. All certificates and endorsements are to be received and approved by the Department before this Agreement commences. The Department reserves the right to require complete, certified copies of all required insurance policies at any time.
4. All policies should contain a revised cancellation clause allowing thirty (30) days notice to the Department in the event of cancellation for any reason including nonpayment.

21. NON-APPROPRIATION Notwithstanding any other provision of this Agreement, if the Department does not receive sufficient funds to pay for the work to be performed under this Agreement, if funds are de-appropriated, or if the State does not receive legal authority to expend funds from the Maine State Legislature or Maine courts, then the State is not obligated to make payment under this Agreement.

22. SEVERABILITY The invalidity or unenforceability of any particular provision, or part thereof, of this Agreement shall not affect the remainder of said provision, or any other provisions, and this Agreement shall be construed in all respects as if such invalid or unenforceable provision or part thereof had been omitted.

23. INTEGRATION All terms of this Agreement are to be interpreted in such a way as to be consistent at all times with the terms of Rider B-IT (except for expressed exceptions to Rider B-IT included in Rider C), followed in precedence by Rider A, and any remaining Riders in alphabetical order.

24. FORCE MAJEURE Either party may be excused from the performance of an obligation under this Agreement in the event that performance of that obligation by a party is prevented by an act of God, act of war, riot, fire, explosion, flood, or other catastrophe, sabotage, severe shortage of fuel, power or raw materials, change in law, court order, national defense requirement, strike or labor dispute, provided that any such event, and the delay caused thereby, is beyond the control of, and could not reasonably be avoided by that party. Upon the occurrence of an event of force majeure, the time period for performance of the obligation excused under this section shall be extended by the period of the excused delay, together with a reasonable period, to reinstate compliance with the terms of this Agreement.

25. SET-OFF RIGHTS The State shall have all of its common law, equitable, and statutory rights of set-off. These rights shall include, but not be limited to, the State's option to withhold for the purposes of set-off any monies due to the Provider under this Agreement, up to any amounts due and owing to the State with regard to this Agreement, any other Agreement with any State department or agency, including any Agreement for a term commencing prior to the term of this Agreement, plus any amounts due and owing to the State for any other reason including, without limitation, tax delinquencies, fee delinquencies, or monetary penalties relative thereto. The State shall exercise its set-off rights in accordance with normal State practices including, in cases of set-off pursuant to an audit, the finalization of such audit by the State agency, its representatives, or the State Controller.

26. INTERPRETATION OF THE AGREEMENT

1. **Reliance on Policy Determinations** The Department shall determine all program policy. The Provider may, from time to time, request the Department to make policy determinations, or to issue operating guidelines required for the proper performance of this Agreement, and the Agreement Administrator shall respond in writing in a timely manner. The Provider shall be entitled to rely upon, and act in accordance with, such written policy determinations and operating guidelines, unless subsequently amended, modified, or changed in writing by the Department, and shall incur no liability in doing so unless the Provider acts negligently, maliciously, fraudulently, or in bad faith. Nothing contained in this Agreement, or in any agreement, determination, operating guideline, or other communication from the Department shall relieve the Provider of its obligation to keep itself informed of applicable State and Federal laws, regulations, policies, procedure, and guidelines, to be in complete compliance and conformity therewith.

2. **Titles Not Controlling** Titles of sections and paragraphs used in this Agreement are for the purpose of facilitating ease of reference only and shall not be construed to imply a contractual construction of the language.

3. **No Rule of Construction** This is a negotiated Agreement and no rule of construction shall apply that construes ambiguous or unclear language in favor of or against any party.

27. PERIOD OF WORK Work under this Agreement shall begin no sooner than the date on which this Agreement has been fully executed by the parties and approved by the Controller and the State Purchases Review Committee. Unless terminated earlier, this Agreement shall expire on the date set out on the first page of this Agreement, or at the completion and acceptance of all specified tasks, and delivery of all contracted products and services as defined in this Agreement, including performance of any warranty and/or maintenance agreements, whichever is the later date.

28. NOTICES All notices under this Agreement shall be deemed duly given: 1) upon delivery, if delivered by hand against receipt, or 2) five (5) business days following posting, if sent by registered or certified mail, return receipt requested. Either party may change its address for notification purposes by giving written notice of the change and setting forth the new address and an effective date.

29. ADVERTISING AND PUBLICATIONS The Provider shall not publish any statement, news release, or advertisement pertaining to this Agreement without the prior written approval of the Agreement Administrator. Should this Agreement be funded, in whole or in part, by Federal funds, then in compliance with the Steven's Amendment, it will be clearly stated when issuing statements, press releases, requests for proposals, bid solicitations, and other documents: (1) the percentage of the total cost that was financed with Federal moneys; and (2) the dollar amount of Federal funds.

30. CONFLICT OF INTEREST The Provider certifies that it presently has no interest and shall not acquire any interest which would conflict in any manner or degree with the performance of its services hereunder. The Provider further certifies that in the performance of this Agreement, no person having any such known interests shall be employed.

31. LOBBYING

1. **Public Funds** No Federal or State-appropriated funds shall be expended by the Provider for influencing, or attempting to influence, an officer or employee of any agency, a member of Congress or

State Legislature, an officer or employee of Congress or State Legislature, or an employee of a member of Congress or State Legislature, in connection with any of the following covered actions: the awarding of any agreement; the making of any grant; the entering into of any cooperative agreement; or the extension, continuation, renewal, amendment, or modification of any agreement, grant, or cooperative agreement. Signing this Agreement fulfills the requirement that Providers receiving over \$100,000 in Federal or State funds file with the Department on this provision.

2. **Federal Certification** Section 1352 of Title 31 of the US Code requires that funds appropriated to a Federal agency be subject to a requirement that any Federal Provider or grantee (such as the Department) certifies that no Federal funds will be used to lobby or influence a Federal officer or member of Congress.

The certification the Department has been required to sign provides that the language of this certification shall be included in the award documents for all sub-awards at all tiers (including sub-agreements, sub-grants, and contracts under grants, loans, and cooperative agreements) and that all sub-recipients shall verify and disclose accordingly. The certification also requires the completion of Federal lobbying reports and the imposition of a civil penalty of \$10,000 to \$100,000 for failing to make a required report. As a sub-recipient, the Provider understands and agrees to the Federal requirements for certification and disclosure.

3. **Other Funds** If any non-Federal or State funds have been or will be paid to any person in connection with any of the covered actions in this section, the Provider shall complete and submit a "Disclosure of Lobbying Activities" form to the Department.

32. PROVIDER PERSONNEL

1. The parties recognize that the primary value of the Provider to the Department derives directly from its Key Personnel assigned in the performance of this Agreement. Key Personnel are deemed to be those individuals whose résumés were offered by the Provider in the Proposal. Therefore, the parties agree that said Key Personnel shall be assigned in accordance with the time frames in the most recent mutually agreed upon project schedule and work plan, and that no re-deployment or replacement of any Key Personnel may be made without the prior written consent of the Agreement Administrator. Replacement of such personnel, if approved, shall be with personnel of equal or greater abilities and qualifications.

2. The Department shall retain the right to reject any of the Provider's employees whose abilities and qualifications, in the Department's judgment, are not appropriate for the performance of this Agreement. In considering the Provider's employees' abilities and qualifications, the Department shall act reasonably and in good faith.

3. During the course of this Agreement, the Department reserves the right to require the Provider to reassign or otherwise remove any of its employees found unacceptable by the Department. In considering the Provider's employees' acceptability, the Department shall act reasonably and in good faith.

4. In signing this Agreement, the Provider certifies to the best of its knowledge and belief that it, and all persons associated with this Agreement, including any Subcontractors, including persons or corporations who have critical influence on or control over this Agreement, are not presently debarred,

suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation by any Federal or State department or agency.

5. During the course of this Agreement, the Department reserves the right to require a background check on any of the Provider's personnel (employees and Subcontractors) that are in any way involved in the performance of this Agreement.

33. STATE PROPERTY The Provider shall be responsible for the proper custody and care of any Department or State owned property furnished for the Provider's use in connection with the performance of this Agreement, and the Provider will reimburse the Department for its loss or damage, normal wear and tear excepted.

34. PATENT, COPYRIGHT, AND OTHER PROPRIETARY RIGHTS

1. The Provider certifies that all services, equipment, software, supplies, and any other products provided under this Agreement do not, and will not, infringe upon or violate any patent, copyright, trade secret, or any other proprietary right of any third party. In the event of any claim by a third party against the Department, the Department shall promptly notify the Provider and the Provider, at its expense, shall defend, indemnify, and hold harmless the Department against any loss, cost, expense, or liability arising out of such claim, including reasonable attorney fees.

2. The Provider may not publish or copyright any data without the prior approval of the Department. The State and the Federal Government, if applicable, shall have the right to publish, duplicate, use, and disclose all such data in any manner, and for any purpose whatsoever, and may authorize others to do so.

35. PRODUCT WARRANTY The Provider expressly warrants its products and services for one full year from their final written acceptance by the Department. The responsibility of the Provider with respect to this warranty is limited to correcting deficiencies in any deliverable using all the diligence and dispatch at its command, at no additional cost to the Department. The Provider is also responsible for correcting and/or updating any documentation affected by any operational support performed under this warranty provision.

36. OPPORTUNITY TO CURE The Agreement Administrator may notify the Provider in writing about the Department's concerns regarding the quality or timeliness of a deliverable. Within five (5) business days of receipt of such a notice, the Provider shall submit a corrective action plan, which may include the commitment of additional Provider resources, to remedy the deliverable to the satisfaction of the Agreement Administrator, without affecting other project schedules. The Department's exercise of its rights under this provision is not and shall be not be construed as a waiver of the Department's right to terminate this Agreement pursuant to Section 13, Termination.

37. COVER If, in the reasonable judgment of the Agreement Administrator, a breach or default by the Provider is not so substantial as to require termination, and reasonable efforts to induce the Provider to cure the breach or default are unavailing, and the breach or default is capable of being cured by the Department or by another contractor without unduly interfering with the continued performance by the Provider, then the Department may provide or procure the services necessary to cure the breach or default, in which event the Department shall withhold from future payments to the Provider the reasonable costs of such services.

38. ACCESSIBILITY All IT products must be accessible to persons with disabilities, and must comply with the State Accessibility Policy and the Americans with Disabilities Act. All IT applications must comply

with the Computer Application Program Accessibility Standard (Maine.gov/oit/accessiblesoftware). All IT applications and contents delivered through web browsers must comply with the Website Standards (Maine.Gov/oit/webstandard) and the Website Accessibility Policy (Maine.Gov/oit/accessibleweb).

39. STATE IT POLICIES All IT products and services delivered as part of this Agreement must conform to the State IT Policies, Standards, and Procedures (Maine.Gov/oit/oitpolicies) effective at the time this Agreement is executed

40. CONFIDENTIALITY

1. All materials and information given to the Provider by the Department, or acquired by the Provider on behalf of the Department, whether in verbal, written, electronic, or any other format, shall be regarded as confidential information.
2. In conformance with applicable Federal and State statutes, regulations, and ethical standards, the Provider and the Department shall take all necessary steps to protect confidential information regarding all persons served by the Department, including the proper care, custody, use, and preservation of records, papers, files, communications, and any such items that may reveal confidential information about persons served by the Department, or whose information is utilized in order to accomplish the purposes of this Agreement.
3. In the event of a breach of this confidentiality provision, the Provider shall notify the Agreement Administrator immediately.
4. The Provider shall comply with Maine Public Law 10 MRSA §1347 (Notice of Risk to Personal Data Act).

41. OWNERSHIP

1. All data (including Geographical Information Systems data), notebooks, plans, working papers and other works produced, and equipment and products purchased in the performance of this Agreement are the property of the Department, or the joint property of the Department and the Federal Government, if Federal funds are involved. The State (and the Federal Government, if Federal funds are involved) shall have unlimited rights to use, disclose, duplicate, or publish for any purpose whatsoever all information and data developed, derived, documented, or furnished by the Provider under this Agreement, or equipment and products purchased pursuant to this Agreement. The Provider shall furnish such information and data, upon the request of the Department, in accordance with applicable Federal and State laws.
2. Upon termination of this Agreement for any reason, or upon request of the Department, the Provider agrees to convey to the Department good titles to purchased items free and clear of all liens, pledges, mortgages, encumbrances, or other security interests.

42. CUSTOM SOFTWARE For all custom software furnished by the Provider as part of this agreement, the following terms and conditions shall apply:

1. The Department shall own all custom software. The Department shall grant all appropriate Federal and State agencies a royalty-free, non-exclusive, and irrevocable license to reproduce, modify, publish, or otherwise use, and to authorize others to do so, all custom software. Such custom software

shall include, but not be limited to, all source, object and executable code, operating system instructions for execution, data files, user and operational/administrative documentation, and all associated administrative, maintenance, and test software that are relevant to this Agreement.

2. A fundamental obligation of the Provider is the delivery to the Department of all ownership rights to the complete system, free of any claim or retention of rights thereto by the Provider. The Provider acknowledges that this system shall henceforth remain the sole and exclusive property of the Department, and the Provider shall not use or describe such software and materials without the written permission of the Department. This obligation to transfer all ownership rights to the Department on the part of the Provider is not subject to any limitation in any respect.

43. OFF-THE-SHELF (OTS) SOFTWARE For all OTS software purchased by the Provider as part of this Agreement, the following terms and conditions shall apply.

1. This Agreement grants to the Department a non-exclusive and non-transferable license to use the OTS software and related documentation for its business purposes. The Department agrees that the Provider may, at its own expense, periodically inspect the computer site in order to audit the OTS software supplied by the Provider, installed at the Department's site, at mutually agreed upon times. In the event that a separate license agreement accompanies the OTS software, then the terms of that separate license agreement supersede the above license granted for that OTS software.

2. This Agreement does not transfer to the Department the title to any intellectual property contained in any OTS software. The Department will not decompile or disassemble any OTS software provided under this Agreement, or modify any OTS software that bears the copyright notice of a third party. The Department will make and maintain no more than one archival copy (for back-up purpose) of each OTS software, and each copy will contain all legends and notices, and will be subject to the same conditions and restrictions as the original.

3. If the CPU on which any OTS software is licensed becomes temporarily unavailable, use of such OTS software may be temporarily transferred to an alternative CPU until the original CPU becomes available.

44. SOFTWARE AS SERVICE When the software is fully owned, hosted, and operated by the Provider, and the Department uses said software remotely over the Internet, the following terms and conditions shall apply:

1. The Provider, as depositor, shall enter into an escrow contract, upon terms acceptable to the Department, with a recognized software Escrow Agent. The escrow contract must provide for the Department to be an additional party/beneficiary. The Provider shall deposit with the Escrow Agent the software, all relevant documentation, and all of the Department's data, and all updates thereof (the "Deposit Materials"), in electronic format. Deposits will occur no less frequently than once a month.

2. The escrow contract shall provide for the retention, administration, and controlled access of the Deposit Materials, and the release of the Deposit Materials to the Department, upon receipt of a joint written instruction from the Department and the Provider, or upon receipt of written notice from the Department that:

a. The Provider has failed to carry out its obligations set forth in the this Agreement; or

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b. A final, non-appealable judicial determination that the Provider has failed to continue to do business in the ordinary course; or

c. The Provider has filed a voluntary petition in bankruptcy, or any voluntary proceeding relating to insolvency, receivership, liquidation, or composition for the benefit of creditors, or becomes subject to an involuntary petition in bankruptcy, which petition or proceeding is not dismissed or unstayed within sixty (60) days from the date of filing; or

d. The Provider is in material breach of its maintenance and support obligations and has failed to cure such breach within thirty (30) days from the date of receipt by the Provider of written notice of such breach; or

e. A condition has occurred that materially and adversely impacts the Provider's ability to support the software and the Provider has failed to cure such condition within thirty (30) days from the date of receipt by the Provider of written notice of such condition.

3. The Provider is responsible for all fees to be paid to the Escrow Agent.

4. The Escrow Agent may resign by providing advance written notice to both the Department and the Provider at least thirty (30) calendar days prior to the date of resignation. In such an event, it is the obligation of the Provider to establish a new escrow account with a new Escrow Agent.

45. PRICE PROTECTION

1. The Provider shall ensure that all prices, terms, and warranties included in this Agreement are comparable to, or better than, the equivalent terms being offered by the Provider to any present customer meeting the same qualifications or requirements as the Department. If, during the term of this Agreement, the Provider enters into agreement(s) that provide more favorable terms to other comparable customer(s), the Provider shall provide the same terms to the Department.

2. If Federal funding is used for the acquisition of products and/or services under this Agreement, interest cannot be paid under any installment purchase or lease-purchase agreement entered into as a part of this Agreement.

OR

45. THIS ITEM IS INTENTIONALLY LEFT BLANK

46. IRREVOCABLE LETTER OF CREDIT In order to assure the Provider's faithful adherence to the terms and conditions of this Agreement, the Provider shall submit an irrevocable letter of credit, acceptable to the Department, that is payable on demand. This letter of credit will be procured at the expense of the Provider, naming the Department as the beneficiary, in the entire Agreement amount. In lieu of this requirement, the Department will accept a commitment letter from a recognized financial institution or investment fund stating that the Provider has sufficient capital to fund the obligations, and has legally committed such capital to fund the obligations, in accordance with this Agreement. The letter of credit, or the equivalent commitment letter, shall specifically refer to this Agreement, and shall bind the parties to all the terms and conditions of this Agreement. The Provider shall have fifteen (15) calendar days from the date of execution of this Agreement to furnish the letter of credit or the equivalent commitment letter. Should the Provider fail to comply with this section, then the Department shall have the right to terminate this Agreement without liability.

OR

46. THIS ITEM IS INTENTIONALLY LEFT BLANK

47. ENTIRE AGREEMENT This document contains the entire Agreement of the parties, and neither party shall be bound by any statement or representation not contained herein. No waiver shall be deemed to have been made by any of the parties unless expressed in writing and signed by the waiving party. The parties expressly agree that they shall not assert in any action relating to this Agreement that any implied waiver occurred between the parties which is not expressed in writing. The failure of any party to insist in any one or more instances upon strict performance of any of the terms or provisions of this Agreement, or to exercise an option or election under this Agreement, shall not be construed as a waiver or relinquishment for the future of such terms, provisions, option, or election, but the same shall continue in full force and effect. Use of one remedy shall not waive the Department's right to use other remedies. Failure of the Department to use a particular remedy for any breach shall not be deemed as a waiver for any subsequent breach. No waiver by any party of any one or more of its rights or remedies under this Agreement shall be deemed to be a waiver of any prior or subsequent rights or remedies under this Agreement.

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RIDER C
EXCEPTIONS TO RIDER B-IT

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RIDER D

Not Required: For use at Department's Discretion

Education Portal Request For Proposal

RIDER E

Not Required: For use at Department's Discretion

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RIDER F

Not Required: For use at Department's Discretion

RIDER G
IDENTIFICATION OF COUNTRY
IN WHICH CONTRACTED WORK WILL BE PERFORMED

Please identify the country in which the services purchased through this contract will be performed:

- ☐ **United States. Please identify state:** _____
- ☐ **Other. Please identify country:** _____

Notification of Changes to the Information
The Provider agrees to notify the Division of Purchases of any changes to the information provided above.